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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054484
Party	Defendant J&M Patent Designs Corp., dba J&M Patent Designs
Correspondence Address	J&M PATENT DESIGNS CORP 6001 W WILLIAM CANNON DRIVE SUITE 203A AUSTIN, TX 78749 UNITED STATES
Submission	Answer
Filer's Name	Melissa Ulrich
Filer's e-mail	melissa@patentdesigns.com, josh@patentdesigns.com
Signature	/Melissa Ulrich/
Date	10/24/2011
Attachments	92054484answertopetitionforcancellation.pdf ( 6 pages )(240498 bytes )



October 24, 2011

Via Electronic System for Trademark Trials and Appeal ("ESTTA") to Addressee

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
BOX TTAB NO FEE  
PO Box 1451  
Alexandria, VA, 22313-1451

Re: Cancellation No. 92054484

Dear Sir/Madam:

Transmitted herewith is Registrant's formal Answer in the above Cancellation.

An identical copy of the above was sent via Express Mail and served on Petitioner to Petitioner's attorney.

Thank you for your assistance in this matter.

Warm Regards,

A handwritten signature in black ink, appearing to read 'Melissa Ulrich', with a large, sweeping flourish extending from the end of the signature.

Melissa Ulrich  
President/Individual/Registrant

Enclosures: Answer of Registrant to Petition to Cancel, Certificate of Mailing  
cc: Karen B Tripp, Attorney for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of service mark

Registration No. 3879592 [IC 42]

Registration Date: November 23, 2010

For the Mark: **J&M PATENT DESIGNS DRAFTING SPECIALISTS** and design

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RICHARD KIRKPATRICK,  
Petitioner

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v.

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J&M PATENT DESIGNS CORP.,  
dba J&M PATENT DESIGNS,  
Registrant

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Cancellation No. 92054484

**ANSWER OF REGISTRANT TO PETITION TO CANCEL**

J&M Patent Designs Corp.,( "Registrant"), a US Corporation in the State of Texas, hereby answers each of the allegations of the Petition to Cancel filed by Richard Kirkpatrick("Petitioner"), an individual.

Registrant denies Petitioner and his business has been, will be, or could be damaged by the registration of the mark shown in Registration No. 3879592 of Registrant as alleged in the first unnumbered paragraph and therefore denies the allegations.

The numbered Answers herein correspond to the numbered paragraphs set forth in the Petitioner's Petition to Cancel.

1. Deny. To the best of our knowledge, this is not true. We have conducted a corporation search in the State of Texas as well as through the Secretary of State's office and have not found any active business for Petitioner. Nor have we found a business address for Petitioner in Austin, Texas. Further more we have not found a business in the State of Texas that corresponds to the Employer Identification Number Petitioner has used in the past.
2. Admit.
3. Admit, however please note Melissa McCullough is AKA Melissa Ulrich.

4. Registrant is without knowledge and information to form a belief to the truth of allegations set forth in paragraph 4.
5. Deny. Joshua McGee was employed by RDK Design LLC, which one of the owners was Petitioner, from July 1999 until May 2003. Melissa Ulrich was employed by RDK Design LLC, which one of the owners was Petitioner, from March 2002 until May 2003. In May 2003, RDK Design LLC closed its doors and ceased to operate with no notice to clients or employees. RDK Design LLC still owes McGee and Ulrich past pay. Joshua McGee was a partner in United Patent Drafting from May 2003 until September 2003. Melissa Ulrich founded Patent Designs in May 2003. In September 2003, Melissa Ulrich, Joshua McGee, and Richard Kirkpatrick formed a corporation, PD Ventures. Melissa Ulrich allowed the company to use her personal DBA, Patent Designs, but never relinquished ownership of the DBA. She owns it to this day. September 2006, PD Ventures was dissolved by a signed agreement of all three owners, McGee, Kirkpatrick(Petitioner), and Ulrich. In September 2006, Joshua McGee and Melissa Ulrich formed J&M Patent Designs(Registrant) and continue to be in business. Tax returns, partnership agreements, and the dissolution agreement of PD Ventures can easily prove these facts to be true.
6. Deny. The dates of hire are inaccurate as are the school completion dates.
7. Deny. RDK Design LLC ceased to operate in May 2003. It was not a name change. The name and DBA Patent Designs is owned outright by Melissa Ulrich and has been owned by Melissa Ulrich since May 2003. Joshua McGee created, with no assistance from anyone, the design mark for the business PD Ventures incorporating a mouse and compass designs with the words "Patent Designs Drafting Specialists".
8. Deny. Joshua McGee was an owner of the business PD Ventures when he created the mark in question. PD Ventures used the mark and it was part of the copyright on the website and domain [www.patentdesigns.com](http://www.patentdesigns.com). Upon dissolution of PD Ventures, McGee and Ulrich were awarded the rights and all that entailed to the domain [www.patentdesigns.com](http://www.patentdesigns.com). Ulrich remained sole owner of the DBA Patent Designs.
9. Deny. Petitioner used the mark as part of his ownership in PD Ventures from September 2003 until September 2006, along with McGee and Ulrich. After that, the use of the mark should have ceased to be used by Petitioner or Petitioner was in violation of the Dissolution Agreement of PD Ventures.
10. Registrant is without knowledge and information to form a belief to the truth of the allegations in Paragraph 10.
11. Registrant is without knowledge and information to form a belief to the truth of the allegations in Paragraph 11.
12. Deny. Registrant became aware of the inappropriate use of the mark by Petitioner in August 2011 when Petitioner's representative sent an email to Registrant with the mark being used.
13. Deny. Joshua McGee and Melissa Ulrich were not employed by Petitioner in 2006. McGee and Ulrich did start J&M Patent Designs in September 2006. Registrant is without knowledge of the market the Petitioner operates in.
14. Deny. McGee and Ulrich owned the mark per the dissolution agreement of PD Ventures.

15. Registrant is without knowledge and information to form a belief as to whether or not Petitioner was aware of the application. Registrant did file the application in 2010.
16. Deny. Registrant is the owner of the mark. McGee created the mark. McGee and Ulrich were awarded the mark in the dissolution agreement of PD Ventures along with the domain name. Ulrich is the owner of the DBA Patent Designs.
17. Deny. Registrant does not know of any other person, firm, corporation, or association that had the right to use the mark in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.
18. Deny. Petitioner should not be using the mark as he has no ownership rights to it. Registrant admits it does cause confusion that the Petitioner uses the mark when he has no rights to it and admits Registrant has grounds for a countersuit.
19. Deny. Petitioner's mark is substantially identical to the Registrant's mark and thus he should cease using it.
20. Deny. Petitioner's mark is substantially identical to the Registrant's mark such that Petitioner's mark is likely to suggest an affiliation of Registrant with Petitioner. Registrant has no desire to be associated with Petitioner.
21. Deny. Petitioner's mark is likely to cause confusion.
22. Deny. Registrant's goodwill and reputation will be damaged and jeopardized by Petitioner's use of Registrant's mark.
23. Deny. In August 2011, Petitioner's employee or contractor sent a solicitation email to Registrant showing use of Registrant's mark. Registrant asked for an address and was never responded to in order to send a cease and desist letter. Registrant sent an email informing Petitioner to cease and desist. Following this exchange, Petitioner applied for a mark nearly identical to Registrant's.
24. Deny. In September 2006, Petitioner lost all rights to use the mark in the dissolution agreement of PD Ventures. Petitioner never owned the DBA, Patent Designs, and has no rights to use the name. Petitioner did not create the mark and has no ownership rights over it.

#### **AFFIRMATIVE DEFENSES**

25. Petitioner fails to state a claim on which relief can be granted.
26. An overwhelming preponderance of the DuPont Factors weigh heavily in favor of Registrant.
27. Petitioner does not have a business in the State of Texas as the petition claims.
28. The dba Patent Designs is owned by Melissa Ulrich and documentation can be shown to prove this.
29. Tax returns can verify ownership in PD Ventures. Tax returns can also verify that McGee and Ulrich were not employees of Petitioner on the dates he alleges.

30. The dissolution agreement of PD Ventures was clear in the language of what McGee and Ulrich retained ownership of including the domain, [www.patentdesigns.com](http://www.patentdesigns.com) and all that it entailed.
31. Petitioner has tried to intentionally deceive, mislead, and cause confusion by registering [www.patentdesigns.net](http://www.patentdesigns.net) following the dissolution agreement of PD Ventures.
32. Petitioner did not file for his mark until after a cease and desist email was sent to his employee or contractor. His mark is nearly identical to Registrant's mark.
33. Registrant has senior rights and priority in relation to the mark.
34. Registrant has used the mark since September 2006. Prior to that the Registrant's owners have used the mark since September 2003. One of the Registrant's owners is the sole creator of the mark and did it as an owner of a business, not an employee. Tax documents can easily support this claim.
35. Registrant reserves the right to develop further defenses during the Discovery Phase.

WHEREFORE, Registrant prays the Petition to Cancel be dismissed in its entirety with prejudice, that the Board agrees the registration should be maintained by Registrant for its trademark J&M Patent Designs Drafting Specialists in IC 42, and that the Trademark Trial and Appeal Board grant such relief as it deems just and proper.

Dated: October 24, 2011

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Melissa Ulrich", is written over a horizontal line.

Melissa Ulrich  
President  
Individual, Registrant, US Citizen  
J&M Patent Designs Corp.  
6001 W. William Cannon Drive  
Suite 203A  
Austin, TX 78749  
United States  
Tel: 512-825-2454  
Email: [melissa@patentdesigns.com](mailto:melissa@patentdesigns.com)

**ELECTRONIC MAILING CERTIFICATE**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being submitted electronically through the Electronic System for Trademark Trials and Appeal ("ESTTA") on the date shown below.

On Melissa Ulrich October 24<sup>th</sup>, 2011

Melissa D. Ulrich

**CERTIFICATE OF SERVICE**

I hereby certify that one (1) copy of this document is being deposited with the United States postal Service as Express Mail, Express Mail Label Number ET 649996008 US

Addressed to:

Karen B Tripp  
PO Box 1301  
Houston, TX 77251-1301 United States

Dated: October 24<sup>th</sup>, 2011 By: Melissa Ulrich

Melissa D. Ulrich